

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZHEJIANG BOAI HOMETEXTILE CO., LTD.,

Plaintiff,

-against-

S. LICHTENBERG & CO., INC.,

Defendant.

COMPLAINT

JAN 17 2013

Plaintiff Zhejiang Boai Hometextile Co., Ltd. ("Zhejiang Boai" or "Plaintiff"), by and through its attorneys, Satterlee Stephens Burke & Burke LLP, as and for its Complaint against defendant S. Lichtenberg & Co., Inc. ("Lichtenberg" or "Defendant"), respectfully alleges,

INTRODUCTION

1. This is an action for breach of contract and goods sold and delivered by Zhejiang Boai, a Chinese manufacturer of home textile products, against Lichtenberg, a New York manufacturer, marketer and seller of home textile products, such as curtains and draperies.

2. In short, Lichtenberg ordered and accepted delivery of hundreds of thousands of dollars worth of products which it has not paid for and has not returned. In addition, other orders were placed, but cancelled inappropriately after the goods had been manufactured.

3. Accordingly, Lichtenberg is liable to Zhejiang Boai for the cost of the products at issue, as well as interest.

THE PARTIES AND THEIR RELATIONSHIPS

4. Plaintiff Zhejiang is a Chinese manufacturer of home textile products, with its principal place of business located in Lanxi City, Zhejiang Province, China.

5. Upon information and belief, Lichtenberg is a New York corporation with its principal place of business at 295 Fifth Avenue, New York, New York 10016.

JURISDICTION AND VENUE

6. The court has diversity jurisdiction over this matter pursuant to 28 U.S.C. §1332, because the matter in controversy exceeds \$75,000, exclusive of interests and costs, and is between citizens of China and the State of New York.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(1), because the sole defendant herein resides in this judicial district.

FACTUAL BACKGROUND

8. Since 2008, Zhejiang Boai has supplied Lichtenberg with products from time to time, as ordered by Lichtenberg.

9. Such orders were generally placed by email from Lichtenberg, through an affiliate located in China, to Zhejiang Boai. The products would then be delivered in the United States, as directed by Lichtenberg, and Zhejiang Boai would invoice Lichtenberg at its New York headquarters for payment.

10. Pursuant to this arrangement, from August 2011 through June 2012, Lichtenberg placed a number of orders with Zhejiang Boai, which were shipped, as directed by Lichtenberg, over time from January through June 2012 (the “Unpaid Orders”).

11. A chart setting forth all of the Unpaid Orders is annexed hereto as Exhibit 1. Each Unpaid Order was requested in a purchase order sent by Lichtenberg to Zhejiang Boai. The purchase orders are collected and attached hereto as Exhibit 2.

12. The products requested in the purchase orders were manufactured by Zhejiang Boai and shipped as directed by Lichtenberg. These products were inspected by Lichtenberg in China prior to shipment. None of the shipments were rejected by Lichtenberg.

13. Each shipment of an Unpaid Order was then invoiced to Lichtenberg. The invoices are collected and attached hereto as Exhibit 3.

14. Lichtenberg has not paid for any of the Unpaid Orders, nor has it returned the merchandise. The total amount due and owing on the Unpaid Orders is \$675,463.63.

15. Furthermore, Lichtenberg placed orders for products that were later cancelled, after manufacture had been completed (the "Cancelled Orders"). A chart setting forth the Cancelled Orders is annexed hereto as Exhibit 4. The purchase orders for the Cancelled Orders are collected and attached hereto as Exhibit 5. The total amount due and owing on the Cancelled Orders is \$60,301.50.

COUNT I

Breach of Contract

16. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 15 as if fully set forth herein.

17. The purchase orders issued by Lichtenberg, as handled by the course of conduct between the parties, constitute valid and enforceable contracts through which Zhejiang Boai agreed to supply certain products and Lichtenberg agreed to pay for them.

18. Zhejiang Boai supplied the required products and otherwise complied with all material terms of the agreements with Lichtenberg.

19. Lichtenberg has breached its obligations with respect to the Unpaid Orders by failing to pay for the products at issue.

20. Lichtenberg has breached its obligations with respect to the Cancelled Orders by refusing delivery and failing to pay for the products at issue.

21. As a direct and proximate result of Defendants' breach of contract, Plaintiffs have suffered damages in an amount to be determined at trial, but in no event less than \$725,000.

COUNT II

Goods Sold and Delivered

22. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

23. As described above, Lichtenberg owes Zhejiang Boai \$675,463.63, and appropriate interest, for goods sold to, and accepted by, Lichtenberg as reflected in Exhibits 1, 2 and 3.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment in its favor and against Defendant as follows:

1. On Count I, awarding damages against Defendant and in favor of Plaintiff in an amount to be determined at trial, but not less than \$725,000, plus interest, for breach of contract;
2. On Count II, awarding damages against Defendant and in favor of Plaintiff in an amount to be determined at trial, but not less than \$675,463.63, plus interest, for goods sold and delivered;
3. Awarding Plaintiffs pre-judgment and post-judgment interest at the maximum rate allowed by law;
4. Awarding Plaintiffs their attorney's fees and costs; and

5. Awarding Plaintiffs such other and further relief as is just and proper.

Dated: January 17, 2013

SATTERLEE STEPHENS BURKE
& BURKE, LLP

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